

**KOLELA MPOYO**  
**2632 S 83<sup>rd</sup> Ave Suite 100-127**  
**PHOENIX, AZ 85043**  
**(480) 626 1175**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Kolela Mpoyo,

Plaintiff,

Vs.

FIS Management Services, LLC,

Defendant.

COMPLAINT CV-17-4307-PHX-SPL

Plaintiff, Kolela Mpoyo, hereby, respectfully represents the following as his complaint against Defendant FIS Management Services, as follows:

**INTRODUCTION**

- (1) This is action arising from the defendant violation of plaintiff rights under Americans with Disabilities Act ("ADA") of 1990, as amended; Genetic Information Nondiscrimination Act ("GINA") of 2008; Age discrimination in Employment Act ("ADEA") of 1967, as amended; and Plaintiff rights under Family and Medical Leave Act ("FMLA").

**PARTIES**

- (2) The Plaintiff, Kolela Mpoyo, is a person residing in Phoenix, Arizona.
- (3) On information and belief, Defendant, FIS Management Services, LLC, does business in Phoenix, Arizona.
- (4) The Defendant employed the Plaintiff from November 4, 2013 to March 28, 2017.

JURISDICTION

- (5) This court has jurisdiction over the clause asserted in this complaint pursuant to 28 U.S.C § 1331.

FACTS

- (6) At all relevant times, the Defendant was subjected to requirement and prohibitions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C § 12101 *et seq.*, in its treatment of plaintiff.

- (7) At all relevant times, the Defendant was subjected to requirement and prohibitions of the Title II of Genetic Information Nondiscrimination Act ("GINA") of 2008, in its treatment of plaintiff.

- (8) At all relevant times, the Defendant was subjected to requirement and prohibitions of the Title I of the Age Discrimination in Employment Act ("ADEA") of 1967 (29 U.S.C § 621 to 29 U.S.C § 634), in its treatment of plaintiff.

- (9) At all relevant times, the Defendant was aware of plaintiff serious health condition.

- (10) On or about October 8, 2015, at FIS request, the Plaintiff completed health assessment and biometric screenings, and one of the Plaintiff's biometrics was flagged as High Risk.

- (11) The Defendant required that three of the five healthy biometrics criteria's be met in order to qualify for better medical insurance coverage.

- (12) In the letters to the Plaintiff in 2016, the Defendant informed the Plaintiff that he did not meet three of the five healthy biometrics required to qualify for reduced cost medical insurance coverage, and then outlined specific actions that the Plaintiff must take, which include further medical screenings; and also

1 informed the Plaintiff to expect additional instructions to arrive in the mail in 2  
2 weeks time.

3 (13) In about 2 weeks as Defendant promised, in the letter to the Plaintiff, the  
4 Defendant made personalized recommendations for medical screenings, which  
5 the Defendant stated were based in part of the Plaintiff medical history and age.

6 (14) Per Defendant recommendations, the Plaintiff took actions and did  
7 undergo medical screenings in the months of February and March of 2016.

8 (15) And the results from Plaintiff medical screenings taken in the months of  
9 February and March of 2016, showed Prostate Cancer.

10 (16) The Plaintiff had already scheduled the date of March 28, 2016 to start  
11 taking some days off from work to deal with medical issues and informed the  
12 Defendant of this date in advance.

13 (17) Then, on this same date of March 28, 2016, the Defendant signed a  
14 termination letter of employment, which was then expedited to the Plaintiff home  
15 address with intent to terminate also the Plaintiff medical insurance within 3 days  
16 from the date the termination letter was signed.

17 (18) Although the termination letter was expedited to the Plaintiff home address  
18 on March 28, 2016, the Plaintiff did not receive that letter until couple days later  
19 and after April 4, 2016 when the Defendant actual spoke to the Plaintiff about  
20 employment termination.

21 (19) On April 4, 2016, the Defendant Human Resources Manager made the  
22 Plaintiff aware, for the first time, of his employment termination, which was  
23 already effective on March 28, 2016.  
24  
25

1 (20) On April 4, 2016, the Defendant moved then terminated Plaintiff access to  
2 FIS systems and terminated also Plaintiff access to his medical records systems,  
3 which is FIS.bioviva.healthfitness.com.

4 (21) In the early month of May of 2016, the Plaintiff made a request for proof of  
5 medical coverage from Blue Cross Shield ("BCBS") of Florida, the provider that  
6 the Defendant utilized, in order to secure another medical coverage within  
7 allowable time after the Defendant terminated Plaintiff medical coverage.

8 (22) No proof of medical coverage was provided after the Plaintiff first  
9 requested it as described in the preceding paragraph.

10 (23) After several follow-up phone calls to BCBS of Florida, a letter dated May  
11 6, 2016 was finally sent to the Plaintiff stating that Plaintiff medical coverage was  
12 terminated on January 1, 2016, which was not true.

13 (24) At the time the Plaintiff employment was terminated by the Defendant on  
14 March 28, 2016, the Plaintiff had medical coverage.

15 (25) The Plaintiff doctor then sought approval from the BCBS of Florida so to  
16 perform medical surgery and treat the Plaintiff, but the BCBS of Florida, the  
17 provider that Defendant utilized, denied the Plaintiff doctor request to perform  
18 medical surgery on Plaintiff and treat him (The Plaintiff).

19 (26) Immediately, after Plaintiff employment was terminated, the Defendant  
20 was still hiring more employees to fill similar positions the Plaintiff held within the  
21 same Plaintiff former team.

22 (27) The Defendant advertised other positions, for which the Plaintiff was  
23 qualified, but the Defendant never invited the Plaintiff for interviews.

24 COUNT I.

25 (Americans with Disabilities Act ("ADA") of 1990, as amended.)

(28) Plaintiff repeats and re-alleges as set forth above.

(29) The Defendant violated the Americans with Disabilities Act ("ADA") of 1990, as amended. The Defendant had requisite knowledge to make a determination that the Plaintiff needed protection for ADA, but failed to comply in accordance with Americans with Disabilities Act ("ADA") of 1990, as amended.

(30) By preemptively terminating the Plaintiff employment and so prevent him from exercising his rights to access medical treatments just at the time the Plaintiff needed them the most, the Defendant is in violation of American with Disabilities Act of 1990, as amended.

(31) The Defendant violation of Plaintiff rights provided by the Act entitled under ADA was willful.

#### COUNT II.

(Genetic Information Nondiscrimination Act ("GINA") of 2008)

(32) Plaintiff repeats and re-alleges as set forth above.

(33) The Defendant violated GINA, 42 U.S.C. 2000ff, *et. seq.*, which prohibits discrimination based on genetic information by health insurers and employers.

#### COUNT III.

(Age discrimination in Employment Act of 1967, as amended.)

(34) Plaintiff repeats and re-alleges as set forth above.

(35) The Defendant violated ADEA, 29 U.S.C § 623 *et. seq*; by discriminating the Plaintiff based on his age (Plaintiff was 51).

(36) The Defendant violation of plaintiff rights provided under ADA was willful.

#### COUNT IV.

(Family and Medical Leave Act of 1992, 29 U.S.C. §§ *et seq.*)

(37) The Plaintiff repeats and re-alleges as set forth above.

1 (38) The Defendant violated § 825.220 of FMLA. "An employer is prohibited  
2 from interfering with, restraining, or denying the exercise of (or attempts to  
3 exercise) any rights provided by the Act." The Defendant interfered with plaintiff  
4 rights provided by the Act.

5 Wherefore, Plaintiff demands judgment against the Defendant FIS as follows:

6 (a) Declare, pursuant to 29 U.S.C § 621 to 29 U.S.C § 634, that by preemptively  
7 terminating the Plaintiff employment and so prevent him from exercising his rights  
8 to access medical treatments, defendant knowingly and willfully violated the  
9 Americans with Disabilities Act ("ADA") of 1990, as amended.

10 (b) Declare, pursuant to 42 U.S.C. 2000ff, *et. seq*, that by collecting plaintiff health  
11 information so discriminating against him, the Defendant willfully interfered with  
12 Plaintiff rights protected under Genetic Information Nondiscrimination Act  
13 ("GINA") of 2008.

14 (c) Declare, pursuant to 29 U.S.C. § 623 (a) , that by discriminating against the  
15 Plaintiff because of his age, the Defendant willfully engaged in unlawful  
16 employment practices and is in violation of Age discrimination in Employment Act  
17 ("ADEA") of 1967, as amended.

18 (d) Declare that actions taken against Plaintiff illegal within the meaning of FMLA  
19 and the Defendant is in violation of Plaintiff rights under Family and Medical  
20 Leave, pursuant to 42 U.S.C. § 1983.

21 (e) Awarding to Plaintiff compensatory damages, in an amount to be determined  
22 against Defendant for violation of Plaintiff rights under Americans with Disabilities  
23 Act ("ADA") of 1990, as amended  
24  
25

- 1 (f) Awarding to Plaintiff compensatory damages, in an amount to be determined  
2 against Defendant for violation of Plaintiff rights under Genetic Information  
3 Nondiscrimination Act ("GINA") of 2008
- 4 (g) Awarding to Plaintiff compensatory damages, in an amount to be determined  
5 against Defendant for violation of Plaintiff rights under Age discrimination in  
6 Employment Act ("ADEA") of 1967, as amended.
- 7 (h) Awarding to Plaintiff compensatory damages, in an amount to be determined  
8 against Defendant for violation of Plaintiff rights under Family and Medical Leave,  
9 pursuant to 42 U.S.C. § 1983.
- 10 (i) Awarding to plaintiff his liquidated damages.
- 11 (j) Awarding to plaintiff his liquidated damages for Plaintiff suffering and mental  
12 anguish.
- 13 (k) Such other further relief as may be deemed just and equitable

14 JURY DEMAND

15 Plaintiff hereby demands a jury trial on all issues triable of right by jury.

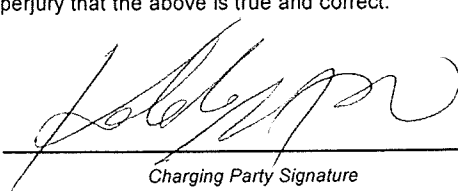
16 RESPECTFULLY SUBMITTED this 27 day of November, 2017

17 Kolela Mpoyo

18   
19  
20  
21  
22  
23  
24  
25



EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To:      Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC <b>540-2016-02738</b>	
<b>Arizona Attorney General's Office, Civil Rights Division</b> and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) <b>Mr. Kolela Mpoyo</b>		Home Phone (Incl. Area Code) <b>(480) 626-1175</b>	Date of Birth <div style="background-color: black; width: 100px; height: 20px;"></div>
Street Address      City, State and ZIP Code <b>8231 W. Globe Ave., Phoenix, AZ 85043</b>			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>FIS MANAGEMENT SERVICES, LLC</b>		No. Employees, Members <b>500 or More</b>	Phone No. (Include Area Code) <b>(414) 357-3084</b>
Street Address      City, State and ZIP Code <b>3050 S 35th Street Suite C, Phoenix, AZ 85034</b>			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address      City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es)) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> GENETIC INFORMATION</div> <div><input type="checkbox"/> OTHER (Specify)</div> </div>			DATE(S) DISCRIMINATION TOOK PLACE Earliest      Latest <b>04-04-2016</b> <input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p><b>On or about November 4, 2013, I was hired by Respondent as a Systems Administrator.</b></p> <p><b>In or about October 2015, I completed a Health Fitness Evaluation that included a blood test screening, which is a national program Respondent has in place for all employees. On or about February 8, 2016, I was requested to have additional medical screening through Life Line Screening, which is part of Respondent's Wellness Program. I was notified on or about March 10, 2016, of my medical condition and sought treatment from my physician.</b></p> <p><b>On or about April 4, 2016, I was contacted by Mr. Beaulieu, HR Director and Ferrad Ali, Senior Systems Administrator and informed that my position was being eliminated and my employment terminated. Mr. Derkser informed me that I was eligible to apply for other available positions within the company. I applied for several positions which I was qualified; however I was never contacted for an interview. I received an email stating one of the positions had been changed or no longer available.</b></p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
<div style="display: flex; justify-content: space-between;"> <div> <b>Aug 11, 2016</b>  <hr/> <small>Date</small> </div> <div>   <hr/> <small>Charging Party Signature</small> </div> </div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	



EEOC Form 5 (11/09)

<p style="text-align: center;"><b>CHARGE OF DISCRIMINATION</b></p> <p style="font-size: small;">This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p>Charge Presented To:      Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA</p> <p><input checked="" type="checkbox"/> EEOC      <b>540-2016-02738</b></p>
<p><b>Arizona Attorney General's Office, Civil Rights Division</b>      and EEOC</p> <p style="font-size: x-small;">State or local Agency, if any</p>	
<p>On or about April 7, 2016, I received my termination letter in the mail signed Rick Derkser, HR Director; which was dated March 28, 2016; however I was not informed of my termination until April 4, 2016.</p> <p>I contacted my insurance company, Blue Cross/Blue Shield, regarding benefits for my medical condition and received notice on or about May 6, 2016, that Respondent had cancelled my insurance on January 1, 2016; however I had never been informed. I believe Respondent cancelled my insurance after my initial health screening in October 2015 revealed my medical condition. I believe Respondent also terminated my employment based on my medical condition, although the team I worked on was one of the busiest; I was one of the most knowledgeable and experienced System Administrators; and no other employees had their positions eliminated or terminated.</p> <p>I believe I was discriminated against because of my national origin (Democratic Republic of Congo), in violation of Title VII of the Civil Rights Act of 1964, as amended, my age, (51), in violation of the Age Discrimination in Employment Act of 1967, as amended, my disability, in violation of the Americans with Disabilities Act of 1990, as amended, and in violation Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008.</p>	

150811 011002 EEOC-PXD

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p>	<p>NOTARY – When necessary for State and Local Agency Requirements</p>
<p><b>Aug 11, 2016</b></p> <p style="text-align: center;"><i>[Signature]</i></p> <p style="text-align: center; font-size: x-small;">Date      Charging Party Signature</p>	<p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p>  <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)</p>